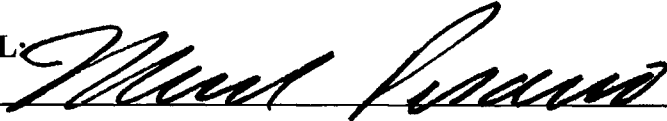


REPORT

DATE: September 1, 2005
TO: Regional Council
FROM: Daniel E. Griset, Sr. Regional Planner, 213.236.1895, griset@scag.ca.gov
SUBJECT: Support of ACA 13

EXECUTIVE DIRECTOR'S APPROVAL:



RECOMMENDED ACTION:

The Regional Council supports ACA 13 and urges the Legislature to place this key water quality measure on an early statewide ballot for voter consideration.

SUMMARY:

ACA 13, authored by Assemblyman Tom Harman of Huntington Beach and Assemblymembers Jones and Mullin, would put before California voters a provision to make stormwater and flood control fees exempt from the voter requirements of Proposition 218. Proposition 218 requires voter approval of all local fees except for fees related to sewer, water and refuse collection services. ACA 13 would give stormwater and flood management programs this same exemption, allowing local governments to implement these programs and related fees without voter approval.

BACKGROUND:

Assemblyman Harmon authored a similar constitutional amendment measure (ACA 10 did not include flood control provisions) that was unable to muster sufficient support to clear the Legislature and reach the Governor's desk. ACA 13, however, appears to have broader support: it is endorsed by the Governor, the League of California Cities, the California State Association of Counties, environmental organizations and others. It is opposed by taxpayer groups that see the measure as an unwarranted bypass of the protections of Proposition 218.

In order for ACA 13 to become law it must be approved by a two-thirds vote in both houses of the Legislature, signed by the Governor and approved by a majority of California voters in a statewide election.

A copy of the draft legislation is appended to this report.

FISCAL IMPACT:



Placing the ACA 13 measure on a statewide ballot will not have a fiscal impact on SCAG. Its statewide passage, however, will provide communities throughout the SCAG region with access to new resources for meeting ever more stringent local water quality standards.

AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

Assembly Constitutional Amendment

No. 13

Introduced by Assembly Members Harman, Jones, and Mullin

February 22, 2005

Assembly Constitutional Amendment No. 13—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending ~~Sections 2 and 5 of Section 5 of, and subdivision (c) of Section 6 of,~~ Article XIII D thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 13, as amended, Harman. Local government: assessments and fees or charges.

The

(1) *The California Constitution conditions the imposition or increase of an assessment by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, except that. The California Constitution exempts the imposition of a flood control assessment existing on November 6, 1996, is not subject to from these requirements. The*

This measure would instead exempt from these requirements an assessment for the purposes of financing the capital costs or maintenance and operation expenses of flood control, whether the assessment existed on November 6, 1996, or is imposed after that date.

(2) *The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge by a city,*

~~county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, and upon the approval by a majority vote of the property owners of the property subject to the fee or charge, or at the option of the entity imposing the fee or charge, by a $\frac{2}{3}$ vote of the electorate residing in the area affected by the fee or charge.~~

~~This measure would also exclude from these requirements any levy for these property owner and voter approval requirements a fee or charge related to flood control purposes, stormwater drainage, or surface water drainage.~~

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2005-06 Regular
3 Session commencing on the sixth day of December 2004,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California, that the
6 Constitution of the State be amended as follows:

7 ~~First—That Section 2 of Article XIII D thereof is amended to~~
8 ~~read:~~

9 ~~SEC. 2. As used in this article:~~

10 ~~(a) "Agency" means any local government as defined in~~
11 ~~subdivision (b) of Section 1 of Article XIII C.~~

12 ~~(b) "Assessment" means any levy or charge upon real property~~
13 ~~by an agency for a special benefit conferred upon the real~~
14 ~~property. "Assessment" includes, but is not limited to, "special~~
15 ~~assessment," "benefit assessment," "maintenance assessment"~~
16 ~~and "special assessment tax." "Assessment" does not include any~~
17 ~~levy imposed for the purposes of flood control, including a levy~~
18 ~~imposed to finance capital costs or maintenance and operation~~
19 ~~expenses for flood control.~~

20 ~~(c) "Capital cost" means the cost of acquisition, installation,~~
21 ~~construction, reconstruction, or replacement of a permanent~~
22 ~~public improvement by an agency.~~

23 ~~(d) "District" means an area determined by an agency to~~
24 ~~contain all parcels which will receive a special benefit from a~~
25 ~~proposed public improvement or property-related service.~~

1 ~~(e) "Fee" or "charge" means any levy other than an ad~~
2 ~~valorem tax, a special tax, or an assessment, imposed by an~~
3 ~~agency upon a parcel or upon a person as an incident of property~~
4 ~~ownership, including a user fee or charge for a property related~~
5 ~~service. "Fee" or "charge" does not include any levy imposed for~~
6 ~~the purposes of flood control, including a levy imposed to~~
7 ~~finance capital costs or maintenance and operation expenses for~~
8 ~~flood control.~~

9 ~~(f) "Maintenance and operation expenses" means the cost of~~
10 ~~rent, repair, replacement, rehabilitation, fuel, power, electrical~~
11 ~~current, care, and supervision necessary to properly operate and~~
12 ~~maintain a permanent public improvement.~~

13 ~~(g) "Property ownership" shall be deemed to include tenancies~~
14 ~~of real property where tenants are directly liable to pay the~~
15 ~~assessment, fee, or charge in question.~~

16 ~~(h) "Property-related service" means a public service having a~~
17 ~~direct relationship to property ownership.~~

18 ~~(i) "Special benefit" means a particular and distinct benefit~~
19 ~~over and above general benefits conferred on real property~~
20 ~~located in the district or to the public at large. General~~
21 ~~enhancement of property value does not constitute "special~~
22 ~~benefit."~~

23 ~~Second~~

24 ~~First—That Section 5 of Article XIII D thereof is amended to~~
25 ~~read:~~

26 SEC. 5. Pursuant to subdivision (a) of Section 10 of Article
27 II, the provisions of this article shall become effective the day
28 after the election unless otherwise provided. Beginning July 1,
29 1997, all existing, new, or increased assessments shall comply
30 with this article. Notwithstanding the foregoing, *an assessment*
31 *for the purposes of financing the capital costs or maintenance*
32 *and operation expenses of flood control, whether the assessment*
33 *existed on November 6, 1996, or is imposed after that date, and*
34 *the following assessments existing on the effective date of this*
35 *article November 6, 1996, shall be exempt from the procedures*
36 *and approval process set forth in Section 4:*

37 (a) Any assessment imposed exclusively to finance the capital
38 costs or maintenance and operation expenses for sidewalks,
39 streets, sewers, water, drainage systems, or vector control.

1 Subsequent increases in those assessments shall be subject to the
2 procedures and approval process set forth in Section 4.

3 (b) Any assessment imposed pursuant to a petition signed by
4 the persons owning all of the parcels subject to the assessment at
5 the time the assessment is initially imposed. Subsequent
6 increases in those assessments shall be subject to the procedures
7 and approval process set forth in Section 4.

8 (c) Any assessment the proceeds of which are exclusively used
9 to repay bonded indebtedness of which the failure to pay would
10 violate the Contract Impairment Clause of the Constitution of the
11 United States.

12 (d) Any assessment which previously received majority voter
13 approval from the voters voting in an election on the issue of the
14 assessment. Subsequent increases in those assessments shall be
15 subject to the procedures and approval process set forth in
16 Section 4.

17 *Second —That subdivision (c) of Section 6 of Article XIII D*
18 *thereof is amended to read:*

19 (c) Voter Approval for New or Increased Fees and Charges.
20 Except for fees or charges for sewer, water, ~~and~~ or refuse
21 collection services, *or fees or charges related to flood control,*
22 *stormwater drainage, or surface water drainage,* no property
23 related fee or charge shall be imposed or increased unless and
24 until that fee or charge is submitted and approved by a majority
25 vote of the property owners of the property subject to the fee or
26 charge or, at the option of the agency, by a two-thirds vote of the
27 electorate residing in the affected area. The election shall be
28 conducted not less than 45 days after the public hearing. An
29 agency may adopt procedures similar to those for increases in
30 assessments in the conduct of elections under this subdivision.